IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5730 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATWARLAL N VYAS

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 5730 of 1989

MR BD KARIA for Petitioner No. 1

MR KH BAXI for Respondent No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 10/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has

challenged the action of the respondents dated 31st August, 1989, by which the petitioner was ordered to prematurely retire from service. It is the case of the petitioner that the petitioner had requested for voluntary retirement by his letter dated 1.3.1989 and the respondents, without considering the said request, have passed the impugned order.

2. Admittedly, the order of premature retirement was not by way of penalty, but was on the review of the performance of the petitioner on crossing the age of 55 years and on the employer having found that the services of the petitioner was such that the petitioner was not required to be continued in service any longer.

3. The respondents have filed a detailed reply and have outlined number of adverse remarks in the service record of the petitioner including certain penalties passed against the petitioner while he was in service. It is also alleged that the petitioner was responsible for committing certain irregularities for which pursuant to a Departmental enquiry, punishment of stoppage of three increments with future effect was imposed on the petitioner. On the basis of the overall consideration of the service record of the petitioner, the respondents decided to order that the petitioner be prematurely retired from service.

4. By now the law on the question of the power of the employer to retire a Government servant on reaching a certain age or upon completion of his service for a certain number of years, which is known as the action of premature retirement, is well settled. Unless the action of the Government is questioned and established as being malafide or so utterly perverse that no reasonable person would come to such a conclusion, it is not open for the Court to set aside such action of the Government (see AIR 1992 SC 1020, AIR 1992 SC 1368 and 1994 SC 1261).

5. In view of the affidavit filed by the respondents and in view of the settled legal position, it is difficult for this Court to come to the conclusion that the impugned decision is illegal or otherwise suffers from perversity. Since the action of the respondents is of premature retirement only, at the same time when the petitioner has asked for voluntary retirement, it is not necessary for this Court to go into the question of non-acceptance of the request of the petitioner since there would be no material difference for the petitioner in either case.

6. In the result, I find that the petition is devoid of any merit and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas